

NOTICE OF DECISION



www.multco.us/landuse ▪ Email: land.use.planning@multco.us ▪ Phone: (503) 988-3043

Application for Lot of Record Verification

Case File: T2-2024-0052

Applicant: Brian Miles

Proposal: The applicant is requesting a Lot of Record Verification for the tax lot identified below. A Lot of Record Verification determines if a property was lawfully established in compliance with zoning and land division laws at the time of its creation or reconfiguration and the County's aggregation requirements. No development is proposed at this time.

Location: 23808 NW Skyline Blvd, North Plains

Property ID # R326318

Map, Tax lot: 3N2W34D-00600

Alt. Acct. # R982340250

Base Zone: Commercial Forest Use – 2 (CFU-2)

Overlays: Significant Environmental Concern for wildlife habitat (SEC-h), Significant Environmental Concern for scenic views (SEC-v), Geologic Hazards (GH)

Determination: The subject property known as 3N2W34D-00600 is not a Lot of Record in its current configuration. If Parcel 2 is consolidated with Parcel 1 by applying for a Lot Consolidation application and recording a new legal description to create a single parcel, a Lot of Record will be established.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Tuesday, December 17, 2024 at 4:00 pm.

Opportunity to Review the Record: The complete case file and all evidence associated with this application is available for review by contacting LUP-comments@multco.us. Paper copies of all documents are available at the rate of \$0.46/page.

Opportunity to Appeal: The appeal form is available at www.multco.us/landuse/application-materials-and-forms. Email the completed appeal form to LUP-submittals@multco.us. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted

Issued by:

Lisa Estrin

Lisa Estrin, Senior Planner

For:

Megan Gibb,
Planning Director

Date:

Tuesday, December 3, 2024

Vicinity Map

N↑



Applicable Approval Criteria:

Multnomah County Code (MCC): MCC 39.1250 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.3005 Lot of Record – Generally, MCC 39.3030 Lot of Record – CFU-2

Copies of the referenced Multnomah County Code sections are available by visiting <https://www.multco.us/landuse/zoning-codes> under the link **Chapter 39: Multnomah County Zoning Code** or by contacting our office at (503) 988-3043.

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.0 Project Description:

Staff: The applicant requests a Lot of Record Verification for the tax lot identified as 3N2W34D-00600 (subject property). This application does not propose any new development.

Through the Lot of Record Verification process, the County reviews the creation or reconfiguration of each parcel, lot, or unit of land involved in the request. The County then verifies that the creation or reconfiguration of the parcel, lot, or unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration. In the CFU-2 zone, the County also considers adjacent ownership on February 20, 1990 in determining whether a parcel, lot, or unit of land is a Lot of Record on its own. If the parcel, lot, or unit of land met all applicable zoning laws, applicable land division laws and meets the aggregation requirements, it may be determined to be a Lot of Record.

2.0 Property Description:

Staff: The subject property is in unincorporated west Multnomah County in the area known as the West Hills rural area. The property is zoned Commercial Forest Use – 2 (CFU-2) and is located outside of Metro’s Urban Growth Boundary (UGB). According to Assessment and Taxation records, the subject property is occupied by a single-family dwelling with attached garage and two outbuildings.

3.0 Public Comment:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties pursuant to MCC 39.1105 (Exhibit C.4). Staff didn’t receive public comments during the 14-day comment period.

4.0 Code Compliance and Applications Criteria:

4.1 MCC 39.1250 CODE COMPLIANCE AND APPLICATIONS.

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit or zoning review approval of development or any other approvals authorized by this code for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

* * *

Staff: As noted in Section 1.0 above, this application is a request for a Lot of Record Verification, which does not require the County to approve development, a land division, a property line adjustment, or a building permit. *This requirement is not applicable.*

5.0 Lot of Record Criteria:

5.1 MCC 39.3005 - LOT OF RECORD – GENERALLY.

(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(1) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(2) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:

(a) By a subdivision plat under the applicable subdivision requirements in effect at the time; or

(b) By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or

(c) By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or

* * *

Staff: To qualify as a Lot of Record, the subject property, when created or reconfigured, must meet MCC 39.3005(B) of this section and meet the Lot of Record standards set forth in the Commercial Forest Use – 2 (CFU-2) zoning district. More specifically, section (B) above requires demonstration that the subject property (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. The Lot of Record standards set forth in the CFU-2 district establish additional requirements unique to the district, which are evaluated in Sections 5.2 of this decision. The findings below analyze whether the Lot of Record provisions in section (B) have been met.

The applicant provided twelve deed(s) to support the Lot of Record request (Exhibit A.4 & A.6.a. – m.). The most current deed was recorded in January 2024 (Exhibit A.6.m.) and describes two parcels being contained in tax lot 3N2W34D-00600 (labeled Parcel 1 and Parcel 2 on the map provided on page 2 of this decision). The earliest deed that contains two legal descriptions matching the current configuration of the subject property was recorded in February 1973 and was in recordable form on October 17, 1972 (Exhibit A.4). In 1972, the subject property was zoned F-2 per historical County zoning maps (Exhibit B.7 & B.8).

The F-2 zone had a minimum lot size of 2 acres. There was no requirement for road frontage or minimum front lot line length or lot width requirements.

Parcel 1: Parcel 1 is 10.48 acres (including ½ of the public right-of-way), abuts both NW Skyline Blvd and NW Rocky Point Rd (public roads), and has a front lot line length of 292.34 feet (Exhibit B.4). *Parcel 1 complied with all applicable zoning laws at the time of its creation or reconfiguration.*

Parcel 2: Parcel 2 is 13,569.6 sq. ft. It does not abut a public right-of-way and has a front lot line length of 41.12 ft. The F-2 zone had a minimum lot size of 2 acres. *As Parcel 2 did not meet the minimum lot size at the time of its creation in 1972, it did not meet the applicable zoning laws at the time of its creation or reconfiguration.*

In 1972, the process to create or divide a parcel required a deed or sales contract dated and signed by the parties to the transaction. The document needed to be in recordable form or recorded with the County Recorder prior to October 19, 1978 [MCC 39.3005(B)(2)(b)]. Parcel 1 and Parcel 2 were created or reconfigured in 1972 by the deed found at Exhibit A.4. *As evidenced by the record, the applicable land division laws were satisfied.*

Based upon the above, Parcel 1 satisfied all applicable zoning and land division laws when it was created or reconfigured in 1972. Parcel 2 did not satisfy all applicable zoning and land division laws when it was created or reconfigured in 1972.

5.2 § 39.3030 LOT OF RECORD – COMMERCIAL FOREST USE-2 (CFU-2).

(A) In addition to the standards in MCC 39.3005, for the purposes of the CFU-2 district a Lot of Record is either:

(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

Staff: Parcel 1 and Parcel 2 are contiguous and under the same ownership on February 20, 1990 (Exhibits A.6.d & e). *Criterion not met.*

(2) A group of contiguous parcels or lots:

(a) Which were held under the same ownership on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.

3. Three examples of how parcels and lots shall be aggregated are shown in MCC 39.3070 Figure 1 with the solid thick line outlining individual Lots of Record:

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, BRC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

Staff: Both Parcel 1 and Parcel 2 are zoned CFU-2. Parcel 1 and Parcel 2 are contiguous and were under the same ownership on February 20, 1990 (Exhibits A.6.d & e) and remain in the same ownership. No other units of land were under the same ownership on February 20, 1990 (Exhibit B.11). Parcel 1 is 10.48 acres. Parcel 2 is 13,596.6 sq. ft. As both units of land are under 19 acres in size, they are aggregated for Lot of Record purposes. While Parcel 2 is not a legally created parcel, “...it is an area of land owned by or under the lawful control and in the lawful possession of one distinct ownership.” as defined by MCC 39.2000 Definitions, Lot which means it is required to be aggregated pursuant to MCC 39.3030(A)(2)(b).

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

Staff: Neither Parcel 1 or Parcel 2 were created via plat after February 20, 1990. *Criterion not met.*

(4) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established habitable dwelling, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the same ownership on February 20, 1990.

(b) Where approval for a “Lot of Exception” or a parcel smaller than 19 acres under the “Lot Size for Conditional Uses” provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

Staff: Parcel 1 is developed with a single-family dwelling. Parcel 2 is vacant. Planning staff reviewed historical records to see if a Lot of Exception or approval for a smaller parcel through a condition use permit had been approved. No lot of exception or conditional use approval was found for Parcel 2. *The exceptions under (4) are not applicable.*

(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

* * *

Staff: Section (B) is for information purposes.

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 39.4135, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: Provided Parcel 2 is consolidated with Parcel 1 to rectify Parcel 2’s noncompliant creation in 1972 (see above), (C) would be applicable to the Lot of Record as tax lot 3N2W34D-00600 has less than the 80-acres minimum lot size for new parcels or lots in the CFU-2 zone.

(D) The following shall not be deemed a Lot of Record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest;**
- (3) A Mortgage Lot.**
- (4) An area of land created by court decree.**

Staff: As discussed above under section 5.1, the two units of land are described in recorded legal descriptions. Parcel 1 is a legal parcel. Parcel 2 was not lawfully established. Both parcels are contained in tax lot 3N2W43D-00600 which is a tax lot solely for assessment and taxation purposes. If Parcel 2 is consolidated with Parcel 1 to rectify its issue, the tax lot will no longer be in existence solely for taxation purposes. The subject parcels are not an area of land created by the foreclosure of a security interest, mortgage lot, or created by court decree. *Criterion met.*

Based on the findings in 5.1 & 5.2 above, the subject tax lot is not a Lot of Record at this time. If Parcel 2 is combined into Parcel 1 so that there is a single parcel in tax lot 3N2W34D-00600, it would become a Lot of Record.

6.0 Exhibits

- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Procedural Exhibits

All exhibits are available for digital review by sending a request to LUP-comments@multco.us.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	2	Application Form	5/08/2024
A.2	1	Site Plan	5/08/2024
A.3	2	Parcel Record Card for R982340250	5/08/2024
A.4	2	Warranty Deed recorded on February 8, 1973 in B909, P221 & 222	5/08/2024
A.5	4	Amended Property Information Report	6/21/2024
A.6	39	<ul style="list-style-type: none">a. Deed – Tenants in the Entirety recordable form December 13, 1947 B1231, P244 & 245b. Warranty Deed recorded September 21, 1950 in B1432, P468 & 469c. Deed recorded May 13, 1969 in B677, P350 – 352d. Deed recorded May 13, 1969 in B677, P353 – 355e. Warranty Deed recorded February 8, 1973 in recordable form October 17, 1972 in B909, P222 – 221f. Warranty Deed recorded December 31, 1996 Instrument #96194830g. Bargain & Sale Deed recorded March 11, 1997 Instrument #97035528h. Warranty Deed recorded April 29, 1999 Instrument #99086022i. Warranty Deed recorded May 04, 2001 Instrument #2001-065593j. Bargain & Sale Deed recorded June 4, 2003 Instrument #2003-128505k. Warranty Deed recorded July 19, 2007 Instrument #2007-129916l. Warranty Deed recorded February 09, 2017 Instrument #2017-017882m. Warranty Deed recorded January 26, 2024 Instrument #2024-004839	11/19/2024

‘B’	#	Staff Exhibits	Date
B.1	2	Assessment and Taxation Property Information for 3N2W34D-00600 (Alt Acct#R982340250 / Property ID#R326318)	5/08/2024
B.2	7	Parcel Record Card for R982340250	5/08/2024
B.3	3	Warranty Deed recorded on January 26, 2024 Instrument #2024-004839	6/07/2024
B.4	1	Tax Map 3N2N34D	6/07/2024
B.5	1	Survey 20912 dated September 21, 1964	7/19/2024
B.6	1	Survey 46949 dated March 1983	7/19/2024
B.7	1	1962 Zoning Map for 3N2W34	11/21/2024
B.8	1	October 5, 1977 Zoning Map for 3N2W34	11/21/2024
B.9	2	1968 Zoning Districts	11/21/2024
B.10	6	F-2 (Agricultural District) Regulations (version 1968)	11/21/2024
B.11	1	Property Ownership 1989 & 1990	11/22/24
‘C’	#	Administration & Procedures	Date
C.1	2	Incomplete letter dated June 7, 2024	11/19/2024
C.2	1	Applicant’s acceptance of 180-day clock	11/19/2024
C.3	1	Complete letter dated July 19, 2024	11/19/2024
C.4	2	Opportunity to Comment	11/19/2024
C.5	8	Decision	12/03/2024